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1 RECORD OF ORAL HEARING
2 UNITED STATES PATENT AND TRADEMARK OFFICE

3 _____
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES

6 _____
7 *Ex Parte* JEAN-CLAUDE HAUER, FRANCIS BERTHON

8 _____
9 Appeal 2009-010176
10 Application 10/684,464
11 Technology Center 3600

12 _____
13 Oral Hearing Held: March 8, 2011

14 _____
15 Before WILLIAM F. PATE, III, STEFAN STAICOVICI , and FRED A.
16 SILVERBERG, *Administrative Patent Judges*.

17 APPEARANCES:

18 ON BEHALF OF THE APPELLANT:

19 JOHN M. BIRD, ESQUIRE
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24 The above-entitled matter came on for hearing on Tuesday, March 8,
25 2011, commencing at 10:21 a.m., at the U.S. Patent and Trademark Office,
26 600 Dulany Street, Alexandria, Virginia, before Victor Lindsay, a Notary
 Public.

PROCEEDINGS

THE USHER: Good afternoon, Calendar No. 9, Appeal No. 2009-010176. Mr. Bird.

JUDGE PATE: Thank you, Mr. Bird. Good morning to you.

MR. BIRD: Good morning, Your Honors.

JUDGE PATE: We've had a chance to look at this case ahead of time, so I think we're up to speed on the technology and we'd like to hear your arguments about patentability.

MR. BIRD: Okay. May it please the Court, I'm John Bird of Sughrue Mion on behalf of assignee Saint-Gobain PAM. I'd like to start with independent claim 1, if that's okay.

JUDGE PATE: Okay. We're there.

MR. BIRD: Independent claim 1 recites an inserted plug positioned in the inner recess to close the opening of the inner recess and which makes the inner side of the frame hinge knuckle appreciably sealed off from the outside and wherein the plug is located below the cover hinge knuckle.

It's the Examiner's position that the hook part 48 of the hinge knuckle in Lovatt corresponds to the inserted plug in the prior art. However, it is our position that the hook 48 cannot be considered as a structure that is inserted into the inner recess of the frame and it's not a structure that is below the hinge knuckle. Instead, the hook 48 is a portion of the hinge knuckle, as can be seen in the figures of Lovatt.

Another independent claim is independent claim 27, and claim 27 recites a plug separate from said cover and disposed below the hinge portion of the cover. Again, the Examiner looks to Lovatt's hook portion 48 as corresponding to the plug. Again, we disagree with the Examiner and

1 believe that, again, the hook isn't a portion of the hinge portion. It's just
2 part of the cover structure and it's not a portion that's separate from the
3 cover and disposed below the cover.

4 There's a third independent claim, claim 30, that recites wherein the
5 plug is disposed in a recess below the end of the cover. So, again, it's our
6 similar argument, it's our position that the hook cannot be -- cannot
7 correspond to a plug that is disposed below the end of the cover since it's
8 part of the knuckle at the end of the cover structure.

9 Also, there are a few dependent claims that that I think we had argued
10 separately and claim 2 talked about elastic. The plug is made of an
11 elastically deformable material it's our position that it would not have been
12 obvious to modify Lovatt in that way. Lovatt does disclose an elastomer
13 gasket 15. However, for the reasons in our Reply Brief, we believe it would
14 not have been obvious to modify the hook portion 48 so that it would have
15 the material of the gasket 18 and that the Examiner's positions are not
16 supported by the evidence.

17 JUDGE PATE: Are you finished?

18 MR. BIRD: Yes, Your Honor.

19 JUDGE PATE: Okay. Do you have any questions, Judge Silverberg?
20 Judge Staicovici?

21 JUDGE STAICOVICI: I have a question regarding claim 30.

22 MR. BIRD: Okay.

23 JUDGE STAICOVICI: Claim 30, merely requires a frame and a
24 cover and a plug. Why can't the cover be just the door 7, and then the entire
25 structure where the plug is 48 be a separate structure than the door?
26

1 MR. BIRD: Well, our position is that, I guess that 7 is the cover, but
2 the rest of the portion, including 48 and 43, the knuckle, is not within a
3 recess below the end of the cover. This portion is attached to the end of the
4 cover and the recess at 33 --

5 JUDGE STAICOVICI: What if the cover is the door 7?

6 MR. BIRD: Oh. If the cover is the door 7, then I guess our position is
7 is there a -- what would the recess below the cover be if the recess, I guess,
8 is 33, which is to the -- I guess below the cover? There isn't a structure
9 that's within that recess itself.

10 JUDGE STAICOVICI: That would be the plug. Plug 48 is within the
11 recess 33.

12 MR. BIRD: The plug 48?

13 JUDGE STAICOVICI: Yes.

14 MR. BIRD: Would be within the recess? I guess another part of the
15 claim is that the plug is a portion that substantially closes an opening in the
16 recess and the opening 50 is not closed by the hook 48.

17 JUDGE STAICOVICI: The opening would be the distance between
18 the cover 7 and the frame 30. That's what the whole entire structure would
19 do it. Hook 48 closes.

20 MR. BIRD: Well, the claim also recites that there is a framed knuckle
21 which receives an end of the cover. The frame comprises -- Claim 30 says
22 the frame comprises a framed knuckle which receives an end of the cover
23 and if 7 is the cover only, then it would not have an end that is received by
24 the framed knuckle, so we would have to consider the cover to include the
25 knuckle portion and to -- we believe that to assert that the knuckle portion is
26 not part of the cover would be inconsistent with this feature.

1 JUDGE PATE: I have no further questions for you either, so we're
2 going to take this case under advisement.

3 MR. BIRD: Okay. Thank you, Your Honors, for your time.

4 JUDGE PATE: Thank you very much.

5 MR. BIRD: Have a good afternoon.

6 JUDGE SILVERBERG: Thank you.

7 (Whereupon, the proceedings, at 10:29 a.m., were concluded.)
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